

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SABRINA LAGUNA,

Plaintiff,

vs.

COVERALL NORTH AMERICA, INC.;
ALLIED CAPITAL CORPORATION,

Defendants.

CASE NO. 09cv2131 JM(RBB)

ORDER DENYING MOTION TO
DISMISS

Defendant Allied Capital Corporation (“Allied”) moves to dismiss the complaint for failure to adequately allege a claim for alter ego liability. Plaintiff Sabrina Laguna opposes the motion. Defendant Coverall North America, Inc. (“Coverall”) has yet to appear in this action. Pursuant to Local Rule 7.1(d)(1), this matter is appropriate for resolution without oral argument. For the reasons set forth below, the motion to dismiss is denied.

BACKGROUND

On September 29, 2009 Allied removed this action from the Superior Court of California, County of San Diego alleging subject matter jurisdiction under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. §1332(d). The Notice of Removal represents that the action proceeded in state court for about one year in state court before Allied was named as a party in the Second Amended Complaint (“SAC”) under

1 an alter ego theory of liability.

2 Plaintiff brings this action on behalf of herself and in a representative capacity
3 on behalf of a class defined as “all individuals in the State of California who have
4 executed a ‘Janitorial Franchise Agreement’ with Defendants and performed services
5 under said agreement during the statutory time period.” (SAC ¶54). Plaintiff broadly
6 alleges that Coverall sold plaintiffs cleaning franchises, knowing that plaintiffs “lack
7 sufficient business to satisfy their obligations under the franchise agreements.” (SAC
8 ¶1). The class members allegedly purchased the franchise for substantial sums
9 (Plaintiff paid an initial fee of \$29,624) based upon Coverall’s “misrepresentations
10 about the guaranteed amount of monthly income the franchises will provide.” Id.
11 Plaintiff’s central allegation is that class members were wrongfully classified as
12 independent contractors in order to avoid paying the “minimum wage, overtime
13 compensation, rest and meal periods, other wage protections, and eligibility for
14 unemployment and workers’ compensation.” Id.

15 Plaintiff seeks to establish an alter ego theory to hold Allied liable for Coverall’s
16 alleged wrongful conduct. Plaintiff alleges that Allied is the sole shareholder in
17 Coverall and Coverall Cleaning Concepts, LLC; regularly removed cash and other
18 assets from Coverall to minimize the ability of creditors to attach funds; did not respect
19 normal corporate formalities (failed to keep corporate minutes and/or backdated such
20 minutes); failed to contribute capital, issue stock, or otherwise complete the formation
21 of these entities; and failed to provide adequate capital and operating funds. (SAC ¶¶9-
22 15). In further support of the alter ego claim, Plaintiff alleges that she learned through
23 the deposition testimony of two Coverall executive officers that these officers prepared
24 data and reports regarding Coverall’s workers and provided those reports directly to
25 Allied. (SAC ¶52).

26 Based upon the above generally described conduct, Plaintiff alleges ten state law
27 claims for breach of contract; misleading advertising in violation of Bus. & Prof.
28 §17200; failure to pay minimum wage in violation of Labor Code §§1194, 1194.2,

1 1197; failure to provide rest periods or compensation in violation of Labor Code
 2 §226.7; failure to provide meal periods or compensation in violation of Labor Code
 3 §226.7; conversion; unfair business practices in violation of Bus. & Prof. §17200; theft
 4 of labor in violation of Labor Code §§216, 553, 1199; and injunctive relief.

5 **DISCUSSION**

6 **Legal Standards**

7 Federal Rule of Civil Procedure 12(b)(6) dismissal is proper only in
 8 "extraordinary" cases. United States v. Redwood City, 640 F.2d 963, 966 (9th Cir.
 9 1981). Courts should grant 12(b)(6) relief only where a plaintiff's complaint lacks a
 10 "cognizable legal theory" or sufficient facts to support a cognizable legal theory.
 11 Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990). Courts should
 12 dismiss a complaint for failure to state a claim when the factual allegations are
 13 insufficient "to raise a right to relief above the speculative level." Bell Atlantic Corp
 14 v. Twombly, __550 U.S. __, 127 S.Ct. 1955 (2007) (the complaint's allegations must
 15 "plausibly suggest[]" that the pleader is entitled to relief); Ashcroft v. Iqbal, 129 S.Ct.
 16 1937 (2009) (under Rule 8(a), well-pleaded facts must do more than permit the court
 17 to infer the mere possibility of misconduct). "The plausibility standard is not akin to
 18 a 'probability requirement,' but it asks for more than a sheer possibility that a defendant
 19 has acted unlawfully." Id. at 1949. Thus, "threadbare recitals of the elements of a
 20 cause of action, supported by mere conclusory statements, do not suffice." Id. The
 21 defect must appear on the face of the complaint itself. Thus, courts may not consider
 22 extraneous material in testing its legal adequacy. Levine v. Diamantheset, Inc., 950
 23 F.2d 1478, 1482 (9th Cir. 1991). The courts may, however, consider material properly
 24 submitted as part of the complaint. Hal Roach Studios, Inc. v. Richard Feiner and Co.,
 25 896 F.2d 1542, 1555 n.19 (9th Cir. 1989).

26 Finally, courts must construe the complaint in the light most favorable to the
 27 plaintiff. Concha v. London, 62 F.3d 1493, 1500 (9th Cir. 1995), cert. dismissed, 116
 28 S. Ct. 1710 (1996). Accordingly, courts must accept as true all material allegations in

the complaint, as well as reasonable inferences to be drawn from them. Holden v. Hagopian, 978 F.2d 1115, 1118 (9th Cir. 1992). However, conclusory allegations of law and unwarranted inferences are insufficient to defeat a Rule 12(b)(6) motion. In Re Syntex Corp. Sec. Litig., 95 F.3d 922, 926 (9th Cir. 1996).

Alter Ego

Allied challenges the adequacy of the alter ego allegations. The legal standards for application of alter ego are well-established:

The two principal questions to establish alter ego are whether there is 'such a unity of interest and ownership between the corporation and its equitable owner that the separate personalities of the corporation and the shareholder do not in reality exist' and whether there would be 'an inequitable result if the acts in question are treated as those of the corporation alone.' [Citation.] The courts consider numerous factors, including inadequate capitalization, commingling of funds and other assets of the two entities, the holding out by one entity that it is liable for the debts of the other, identical equitable ownership in the two entities, use of the same offices and employees, use of one as a mere conduit for the affairs of the other, disregard of corporate formalities, lack of segregation of corporate records, and identical directors and officers. [Citation.] No single factor is determinative, and instead a court must examine all the circumstances to determine whether to apply the doctrine. [Citation.] Moreover, even if the unity of interest and ownership element is shown, alter ego will not be applied absent evidence that an injustice would result from the recognition of separate corporate identities, and '[d]ifficulty in enforcing a judgment or collecting a debt does not satisfy this standard.'

VirtualMagic Asia, Inc. v. Fil-Cartoons, Inc. 99 Cal.App.4th 228, 244 (2002).

Allied contends that the SAC's alter ego allegations are too conclusory under Twombly and Iqbal to state a claim. These recent Supreme Court authorities clarified that "labels and conclusions, and a formulaic recitation of the elements of a cause of action will not" survive a motion to dismiss. Twombly, 550 U.S. at 515-16. However, a complaint is sufficient if it gives the defendant "fair notice of what the . . . claim is and the grounds upon which it rests." Id.

Here, the court concludes that the complaint, at this early stage in the proceeding, adequately apprises Allied of the nature of the claim and the grounds for Plaintiff's claim. The issue of alter ego involves an assessment of numerous factor with no single determinative factor. See Virtual Magic, 99 Cal.App.4th at 244. The SAC alleges that


1 Allied is the sole shareholder in Coverall and Coverall Cleaning Concepts, LLC;
 2 regularly removed cash and other assets from Coverall to minimize the ability of
 3 creditors to attach funds; did not respect normal corporate formalities (failed to keep
 4 corporate minutes and/or backdated such minutes); failed to contribute capital, issue
 5 stock, or otherwise complete the formation of these entities; and failed to provide
 6 adequate capital and operating funds. (SAC ¶¶9-15). In further support of the alter ego
 7 claim, Plaintiff alleges that she learned through the deposition testimony of two
 8 Coverall executive officers that these officers prepared data and reports regarding
 9 Coverall's workers and provided those reports directly to Allied. (SAC ¶52).¹

10 The court concludes that these allegations raise the right to relief beyond a mere
 11 speculative level. Twombly, 550 U.S. at 515. The allegations sufficiently identify the
 12 contours of an alter ego claim such that Allied is able to prepare a response to the SAC
 13 and to conduct discovery. The court notes that discovery will assist the parties in
 14 developing their respective arguments. The fundamental inquiry to establish a viable
 15 alter ego claim requires the parties to delve into the unity of interests shared by Allied
 16 and Coverall - - knowledge uniquely within the possession of the corporate entities, and
 17 not Plaintiff.

18 In sum, the motion to dismiss is denied.

19 **IT IS SO ORDERED.**

20 DATED: December 18, 2009

21 
 22 Hon. Jeffrey T. Miller
 23 United States District Judge

24 cc: All parties

25
 26
 27 ¹ In assessing the adequacy of the allegations arising from the deposition testimony of Coverall
 28 management (SAC ¶52), Allied requests that the court consider the entire deposition testimony. The
 court presently declines to expand the scope of review to consider evidentiary matters better raised
 in the context of a Rule 56 motion.